

REARDAN TWIN BUTTES WIND PROJECT MITIGATION AGREEMENT

Washington Department of Fish and Wildlife (WDFW)

And

Energy Northwest (EN)

This Agreement (Agreement) is made and entered into this 25th day of April, 2006, by and between the Washington Department of Fish and Wildlife, and Energy Northwest, acting by and through its Business Development Fund at M/D 1040, PO Box 968, Richland, WA 99354.

AGREEMENT

Now THEREFORE, in consideration of the mutual covenants and other consideration contained herein, IT IS AGREED:

- 1) A Technical Advisory Committee (TAC) shall be formed with members representing WDFW, USFWS, Lincoln County government, project landowners, the Applicant, and local Audubon Society. The objectives of the TAC during construction and operation of the wind power project will at a minimum, be to:
 - a) Coordinate appropriate mitigation measures.
 - b) Monitor impacts on wildlife and habitat and address issues that arise regarding wildlife impacts.
 - c) Evaluate the effectiveness of the monitoring and make necessary adjustments based on monitoring data and available data from other projects.
- 2) EN shall provide compensatory mitigation as described below:
 - a) Mitigation for Permanent Habitat Loss:
 - i) Mitigation will be required for all permanent habitat impacts associated with the development of the project including: the wind turbines (tower footprint, turbine bases, area under the arc of the turbine, access roads), substation footprint, building footprints, power line corridors, and reasonable buffers for the impacted habitat components.
 - ii) Replacement habitat should be like-kind and/or equal or higher habitat value than the impacted area. WDFW and EN may negotiate an alternative for replacement habitat that differs from impacted habitat.

- iii) 1:1 Acquisition of Grassland and CRP Replacement Habitat. One acre of suitable replacement grassland or CRP habitat will be accepted as mitigation for one acre of such habitat that is permanently impacted.
- iv) 2:1 Acquisition of Shrub-Steppe Habitat. Two acres of suitable shrub-steppe will be accepted as mitigation for one acre of permanently impacted shrub-steppe habitat.
- v) 2:1 Acquisition of Ponderosa Pine Forest. Two acres of suitable ponderosa pine habitat will be accepted as mitigation for one acre of permanently impacted ponderosa pine habitat.

b) Mitigation for Temporary Impacts to Habitat:

- i) Mitigation will be required for all temporary non-cultivated habitat impacts associated with the development of the project including: road construction, powerline corridors, staging areas, turbine platform construction, substation and building construction, and other temporary impacts associated with project development.
- ii) Restoration, Mitigation for Temporary Impacts to Grass, CRP Lands -- 0.1:1
 - (1) Temporary impacts to grassland or CRP habitat can be mitigated by:
 - (a) Implementing a WDFW approved restoration plan for the impacted area. The restoration plan should include site preparation, reseeding with appropriate vegetation, noxious weed control, and protection from degradation.
 - (b) Acquiring 0.1 acres of suitable replacement habitat for every acre temporarily impacted by the project.
 - (c) A good faith effort should be made to restore the impacted area; however long-term performance targets should not be imposed since temporal losses and the possibility of restoration failure are incorporated into the acquisition and improvement of replacement habitat.
 - (d) WDFW and EN may agree on other ratios and terms where doing so is mutually beneficial.
- iii) Restoration, Mitigation for Temporary Impacts to Shrub-steppe Habitat— 0.5:1
 - (1) Temporary impacts to shrub-steppe habitat can be mitigated by:
 - (a) Implementing a WDFW approved restoration plan for the impacted area. A restoration plan should include site preparation, reseeding with appropriate vegetation, noxious weed control, and protection from degradation (irrigation or planting with live plants will not be required).
 - (b) Acquiring 0.5 acres of suitable replacement habitat for every acre temporarily impacted by the project.
 - (c) A good faith effort should be made to restore the impacted area; however long-term performance targets should not be imposed since temporal losses and the possibility of restoration failure are incorporated into the acquisition and improvement of replacement habitat.

- (d) WDFW and EN may agree on other ratios and terms where doing so is mutually beneficial.
- iv) Customized Acquisition and Restoration Packages – This Habitat Mitigation proposal should not be viewed as preventing or discouraging WDFW and EN from negotiating “customized” or “alternative” mitigation packages where circumstances make it desirable for both parties to use accepted methodologies (such as NRDA or an alternative mitigation option) to do so.
- 3) Mortality Threshold Levels:
- a) Project wide predictions:
- i) Bats; 1 to 4/MW/year
 - ii) Raptors; 0.05 to 0.25/MW/year
 - iii) Passerines; 2 to 5/MW/year
- (1) If project wide bird or bat mortalities exceed the anticipated totals by a factor of two, the TAC will reconvene in a timely manner and will develop appropriate mitigation and/or additional monitoring if necessary.
 - (2) If triggers are not exceeded, but mortality of groups or individual species reach levels of concern, the TAC will develop appropriate mitigation and/or additional monitoring if necessary.
 - (3) As mortality thresholds were not determined for waterfowl and shorebirds, and use may be potentially high in the area, particularly during the migration period, a mortality threshold must be finalized by the conclusion of the extended studies addressed below.
- b) Individual Turbines or Adjacent Turbines:
- i) If any individual turbine or adjacent turbines exceed the anticipated passerine or bat kill expectations by a factor of five, or more than 3 raptors are found at any one turbine, the TAC will reconvene in a timely manner and will develop appropriate mitigation and/or additional monitoring if necessary.
 - ii) If unforeseen incidents occur, the TAC will reconvene in a timely manner and will develop appropriate mitigation and/or additional monitoring if necessary.
- c) State Species of Concern including Endangered Species or Candidate Species:
TAC shall be immediately notified of all mortalities of State Listed Species.
- 4) A post-construction monitoring plan will be developed in coordination with the TAC. The TAC will evaluate the mitigation and monitoring program and determine the need for further studies and mitigation measures in accordance with the WDFW Windpower Guidelines. The TAC must approve the final post-construction monitoring plan. The TAC shall reconvene if unanticipated impacts become apparent during incidental monitoring.
- a) EN shall grant permission for non-EN personnel to be involved in the post construction bird and bat monitoring, including WDFW employees, WDFW Volunteers, and local Audubon volunteers.
 - b) EN has agreed to 1 year of post-construction monitoring studies to evaluate impacts to avian species and bats, combined with incidental monitoring for the

life of the project. As new methodologies become accepted, these should be evaluated as necessary to continue a commitment to the use of Best Available Science techniques.

- i) The studies shall include at a minimum standardized carcass searches throughout the year, combined with searcher efficiency trials and carcass removal trials to estimate the direct impacts to avian species from the project
 - ii) The studies will follow a detailed written protocol, which will document the monitoring measures being conducted.
- 5) EN agrees that a carcass recovery and mortality monitoring plan be implemented by wind project personnel for the life of the project. This plan shall follow a detailed written protocol developed for the project consistent with Best Available Science techniques. This plan must be reviewed and approved by the TAC.
- 6) EN agrees to conduct a special winter operational survey of raptors with conditions agreeable to WDFW. This survey will occur during typical winter conditions and will be requested by WDFW when weather conditions are considered optimal.
- 7) The specific location of turbine footprints has not been established. The siting of the towers is the single most important factor in determining avian mortality. The TAC shall be directly involved in the review and approval of turbine siting locations and such approval shall not be unreasonably withheld.
- 8) Disturbed areas shall be reseeded with appropriate native grass seed mix, determined in consultation with appropriate local jurisdictions and WDFW.
- 9) On lighting not regulated by the FAA, the Project shall use motion detector lights. Where possible, downcast light is preferred to minimize the attraction of night flying birds and bats.
- 10) The Project shall implement adequate conductor spacing and use of perch guards in accordance with the Avian Protection Plan Guidelines (APLIC and USFWS, 2005) on all new overhead power lines associated with the project to minimize the impacts to raptors and other birds.
- 11) Monitor known raptor nests on site for activity prior to construction and modify construction timing and activities where feasible to avoid impacts to nesting raptors.
 - a) Flagging shall be used to mark nesting areas to ensure that any raptor nest areas near the construction activity are posted as off limits to all construction personnel.
- 12) Proper storage and management of all wastes generated during construction.
- 13) Require construction personnel to avoid driving over or otherwise disturbing habitat outside of the designated construction areas.

14) Prior to decommissioning, a Decommissioning Plan will be developed and submitted to the TAC for review and approval. This plan will be transferable along with other related agreements between EN, WDFW, and Lincoln County.

15) Agreement Execution

ENERGY NORTHWEST

Signature: 

Name: Jack W. Baker

Title: VP Energy Business Services

Date: 3-28-06

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

Signature: 

Name: William Brooks

Title: WDFW Contracts Officer

Date: APR 25 2006